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Senate

The Senate met at 1 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, CAPT Albert L. Hill, of the Chaplain Corps, United States Navy. He is stationed at the Naval Amphibious Base at Little Creek, VA.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

Eternal Father, Lord of the nations, we, the people of this Nation, give You our thanks for the existence of our Senate. We lift up to You once again these 100 men and women we have selected from among us to serve in this place—to be the Senators who craft our laws and attend to our well-being as a people and a nation.

Amid the complexity and confusion of competing perspectives, attune their thoughts and their actions to Your Divine will so that each and all may speak what is true and do what is right and good. Sustain their patience and respect for those with whom they disagree, and provide them humility in the expression of their own convictions, recognizing the limitations of all human knowledge and understanding. Protect them and their loved ones from danger and disease. Shelter them from the pressures that every moment press in and down upon them so that they may always have room to breathe and time to think. Give to each man and woman in this Senate at least one moment of pure and honorable joy today, to restore a hopeful spirit in the midst of weary work.

Wise and gracious God, make this Senate a blessing to the Nation and to all the peoples of the world. Hear us and grant this prayer for the sake of Your glory. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today, the Senate will conduct a period of morning business until 2 p.m. I ask unanimous consent that the time be equally divided.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Following morning business, the Senate will resume consideration of S. 150, a bill relating to the taxation of Internet access. I remind my colleagues that the moratorium on these taxes expired last year. Last year we began consideration of the bill; however, it was set aside to allow the principals involved in the legislation an opportunity to try to negotiate a resolution. I have put everyone on notice that we would resume consideration this week, and it is time to proceed with this important legislation.

I had hoped the Senate would resume the bill today; however, there was an objection to proceeding from both sides of the aisle. Therefore, today, at 5:30 p.m., the Senate will conduct a rollcall vote on invoking cloture on the motion to proceed to S. 150. I encourage Members to allow us to go forward and begin consideration of this bill.

Members may want to offer other alternatives to the underlying moratorium; therefore, I hope that cloture can be invoked so we can allow amendments to come forward. If we are able to proceed to the bill, then I expect

amendments and votes throughout this week, with the expectation of finishing the bill prior to the week's end.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business until 2 p.m., with Senators permitted to speak for up to 10 minutes each, equally divided.

Mr. FRIST. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SMITH). Without objection, it is so ordered.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak for up to 15 minutes in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERNET TAXATION

Mr. WYDEN. Mr. President, this week the Senate will spend most of its time on the question of taxation of the Internet. Having been the principal sponsor of the legislation on this subject in the Senate twice, I would be the first to say this subject inherently is about as interesting as prolonged root canal work. But at the same time, I think it is fair to say the decisions the Senate makes with respect to this subject will say a whole lot about the future of the Internet.

For example, the decisions will determine, to some extent, whether e-mail

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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and spam filters and Google searches and Web sites and instant messaging are singled out for discriminatory tactics. The Senate is going to have to make some decisions about whether Internet access through cable is tax free, but consumers who choose DSL Internet access would get taxed.

I wanted to take just a few minutes this afternoon to go through some of the history with respect to this issue, and particularly suggest that I think the key, as the Senate takes up this subject, is to keep in mind two principles that have been important to me.

First has been the question of technological neutrality. I think it is absolutely key that as the Senate looks to make technology a policy that we ensure there is fair treatment and true competition among all of the various technologies that drive decisions in this field.

I say to the President pro tempore of the Senate, I can recall when we were looking at this legislation initially, and the Senator from Alaska was enormously helpful to me. What we found out was, for example, early on, if you bought the Wall Street Journal in some States and you got the interactive edition, you paid a big tax, but if you bought it the traditional way, through snail mail, for example, there was no tax. That, it seemed to me, was not technologically neutral. That did not ensure we would have competition in the greatest possible way to benefit the consumer, and that was very much at the heart of my concern as I authored in the Senate the first internet tax freedom bill.

The second concern that was foremost in my mind was the question of how this would affect our States and localities with respect to revenue. At that time, we had a number of Governors, mayors, county officials, and others expressing tremendous concern with respect to revenue. I have always tried to take those concerns very seriously. That is why I wanted to outline some of what was said during the years when those early bills were debated because I think we are going to have a repeat of those discussions.

To some extent, some of the State and local officials who raised concerns about the revenue impact of what we did during the first two iterations of the internet tax freedom bill have dusted off the arguments and, in effect, brought them to the Senate again.

To go through some of the history, if I might, back in 1997, the National Governors Association, an organization I tremendously respect, said the Internet Tax Freedom Act would "cause the virtual collapse of the State and local revenue base." But the record shows that the following year, State and local sales tax revenues were up \$7.2 billion.

Let me repeat that. We were told in 1997 that we would have a virtual collapse of the State and local revenue base. The following year, we saw a significant increase in local and State tax revenues.

In 2001, when we dealt with the issue again, opponents said:

The growth of e-commerce represents a significant threat to State and local tax revenues and they might lose tax revenue in the neighborhood of \$20 billion in 2003.

Once again, the record shows otherwise. According to the National Association of State Budget Officers, State sales tax collections rose from \$134.5 billion in 2001 to \$160.4 billion in 2003, an increase of more than \$15 billion in just 2 years.

We saw this pattern continue in 1998 as well when the National League of Cities said:

A tax-free Internet would place Main Street retailers at competitive disadvantage and would doom the sales tax.

But e-commerce still only represented 1.6 percent of total retail sales in 2003, while brick-and-mortar retail sales grew from \$2.6 trillion in 1998 to \$3.4 trillion in 2003, according to the Commerce Department.

In three instances with respect to projections by the National Governors Association, the National Association of State Budget Officers, and the National League of Cities, as the Senate dealt with the two iterations of the tax freedom bill, when this body was told that tremendous amounts of revenue would be lost, in each instance, as I have just documented this afternoon, actual revenues collected went up rather than revenues going down.

The reason I have taken the time to go through that is I am sure during the course of this week, we are going to hear the same kinds of projections. We are going to see State and local officials come and say if the Senate reauthorizes this law that has been reauthorized twice, pretty much Western civilization is going to come to an end. They are going to say they are going to be in dire straits with respect to the funds they are going to need for critical services and that they will find all form of financial calamity.

I am very interested in addressing those concerns. I have great empathy for the challenge of funding State and local services, but I just want the Senate to know, and why I am focusing on this point at the start of the debate, that again and again over the last 7 years, as this debate has gone forward, the Senate has been given these projections about calamitous losses to our States and localities if the internet tax freedom bill is passed, and as I have pointed out, in instance after instance, revenue has gone up rather than down.

I think it is fair to say that all of these technologies, in the issue of whether someone gets internet access over DSL or whether they obtain it through cable, are complicated. That is why I, Senator ALLEN, Senator MCCAIN, and others who have worked on this issue have tried to spend time talking to all concerns. Frankly, we have made a number of changes in an effort to try to accommodate the issues brought up by those who do not share our view.

For example, we have in several instances tightened definitions of Internet access that have been raised. We have agreed to a request for new statutory language on what is called bundling, where various technologies are bundled together. We have added language to protect a host of taxes for States and localities, such as property and income taxes that have never been affected by the original legislation, but because there was concern on the part of States and localities, we wanted to drive home our intent not to have these areas taxed.

We have also agreed to a request for provisions to protect universal service, regulatory proceedings, and we also agreed to deal with some requests from States for what is called grandfathering so as to protect existing sources of revenue.

At the end of the day, we want to make sure that consumers who now hear the message "You've got mail" don't get a message, "You've got special taxes." That is what this issue has always been about. It is clear from the history of this legislation that we do not want the Internet to get preferential treatment, nor do we want it singled out for discriminatory treatment. That is what I sought to do when we began this debate late in 1996. I pointed out, for example, how a newspaper that was purchased online would be taxed, but a newspaper that was purchased in the traditional way would not be taxed. That is not technological neutrality.

That is what the sponsors of this legislation are seeking to protect. The alternative that several of our colleagues are interested in would take a very different approach. That alternative would essentially break up Internet access into individual components so that if they chose to do so, States and localities could tax each one of those components.

Under that, for example, Internet consumers could be subjected to close to 400 separate telecommunications taxes, administered by something like 10,000 different jurisdictions.

In effect, each piece of e-mail, the filtering systems that families use to block pornography and spam and each Web site, each blackberry message conceivable is exposed to tax by scores of jurisdictions. Each town that chooses to do so could tax the e-mail flowing through its phone or cable lines even if the e-mail was not being sent from or to someone in the jurisdiction. I think it is fair to say if even a modest portion of the jurisdictions that could impose these taxes chose to do so, we would be talking about a massive increase in the cost of Internet access to every consumer in America.

What I think this is really all about is that the States and localities essentially see the Internet as the last cash cow in the pasture. In effect, they have been barred by the courts from going after phone sales. They have been barred by the courts from going after

mail order. So now along comes the Internet, and the Internet is being seen as an enormous cash opportunity.

The fact is, Internet sales in 2003 are still only 1.6 percent of total retail sales. They grew at a far more modest rate than brick and mortar sales grew over the last few years, but that is not even the central point.

All of us understand the value of the Internet as a tool for businesses and communication and to improve health care and extend cultural opportunities. The Chair and I share a State with mostly small towns and folks who have to go great distances, and the Internet is one of the best tools, if not the ideal tool, for compensating for major distances from commercial centers and major population centers.

So I hope my colleagues will think through the history I have outlined with respect to the revenue protections and the question of whether vast amounts of revenue are going to be lost because I think the record shows those dire projections to State and localities have not come to pass.

I hope my colleagues will also see the principle of technological neutrality that I sought 7 years ago still is a sound one and one that the Senate ought to preserve. It does not make sense to me to say, for example, that cable Internet access ought to be tax free and then stick it to consumers who choose DSL Internet access.

So we are going to be dealing with these issues over the course of the week, but I wanted to take a few minutes to make clear that we are going to be protecting the States and localities from property and income taxes and telecommunications carriers. They are concerned about it. We agreed to their proposal to deal with what is called bundling to make sure that Internet service providers cannot hide from tax services that would otherwise be subject to bundling. We narrowed the definition of Internet access so as to try to find common ground.

States and localities were concerned about sweeping up all telecommunication services into Internet access so that no telecommunication service could be taxed. The changes in definitions that we made narrowed the definition and ensured that the Senate would still keep up with the significant technological developments in the field.

The bill ensures that all platforms, whether dial-up, digital subscriber lines, cable mode, satellite, wireless, or any other technology platform, as well as the components used to provide Internet access, would be covered by the moratorium.

So I think we are going to have an important debate this week. I expect to spend a fair amount of time on the Senate floor as we discuss it. This has never been a partisan issue. I have worked on this legislation with Chairman MCCAIN and with Senator ALLEN over the last few years since he has come to the Senate. I think ultimately

the decisions that the Senate makes are going to say a whole lot about where the Senate wants Internet to go in the future.

I cannot believe the Senate wants to subject e-mail, blackberries, and a variety of technologies to scores of new and discriminatory taxes. That is what this debate has always been about: should the Internet be subject to discriminatory taxation. If a jurisdiction, for example, taxes brick and mortar sales, they can tax sales online and through the Internet in exactly the same kind of fashion.

I hope the Senate can find common ground on this legislation this week and continue a law that has worked. I am proud to be able to have been a part of this consideration over the last 7 years, and I hope we can pass reauthorization for a third time so as to promote true competition between all technologies in a fashion that ensures that this idea of technological neutrality we had 7 years ago is preserved, and to do it as we have sought to do so that the dire revenue projections we will hear this week about States losing vast amounts of money will not come true as they have not come true over the last 7 years.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, what is the parliamentary situation? Are we still in morning business?

The PRESIDING OFFICER. The Senate is in morning business.

Mr. LEAHY. I thank the Chair.

ENVIRONMENTAL POLICY

Mr. LEAHY. Mr. President, last Thursday I came to the floor to mark Earth Day, and I wanted to highlight the laser-like focus of the Bush administration in rolling back 30 years of environmental protections. When one looks at their record, it is literally breathtaking.

The reason I am concerned about this is that most of our environmental legislation was put together by bipartisan coalitions. In my State of Vermont we do not think of the environment as a Republican or a Democratic issue. We think of it as an issue of protecting what is best about our country and protecting it for not only ourselves but for our children and our grandchildren.

Unfortunately, this administration tends to look at the environment as something where they should react to their largest contributors and take advantage of what it may do for them today and let our children and our grandchildren worry about it tomorrow.

Why do I say this? Three years into office, the Bush administration has taken well over 300 actions to weaken and sometimes to gut environmental protections to clean the air we breathe, the water we drink, and the food we eat. They have taken huge steps to hand over our public lands to timber, oil and gas companies for more drilling and logging.

With this record, it is no wonder that the administration continues to use every page of its public playbook to downplay the effect of these rollbacks.

One of their favorite tactics is announcing environmental rollbacks on Fridays or around holidays when they think the American public will not be paying attention. In fact, we all know if you have something good you want to announce, you do it early in the week, you do it with a lot of fanfare. But if you have something you don't want anybody to pay much attention to, you do it late on Friday.

The administration has announced at least 40 environmental rollbacks on Fridays, another 20 on holidays. Actually, for them, every Friday is Friday the 13th: Friday, November 22, the clean air rollback; Friday, January 3, 2003, fast-tracked logging; Friday, January 29, 2003, clean water protections threatened; Friday, July 11, 2003, weakened our drinking water protections; Friday, October 10, 2003, changed environmental rules for mining waste; on Friday, October 17, 2003, dioxin regulation, or in this case deregulation. And on and on. These are just a few of the actions they have taken on Friday. They show just how far the administration has gone in gutting the Clean Air Act, ramping up logging in some of our spectacular national forests, dumping more mining wastes on public lands, and dumping more sewage sludge on private lands.

Another favorite tactic is either ignoring or sometimes, if the science doesn't suit their political needs, if they cannot get away with ignoring the science, then they just change it. One of the most blatant examples of this was the White House scrubbing of an annual EPA air report to avoid any mention of evidence of climate change.

Just recently, the New York Times reported on the creative White House fact spinning of the administration's proposed retreat from strong mercury controls at powerplants.

We all recognize their favorite tactic: If you are going to gut the environment, then just give it a nice name. You can see the number of focus groups they must use in the administration to come up with these names. They don't say, we are going to join Polluters-R-Us, or we are going to give a payoff to some large polluting corporation because they helped out in a fundraiser. Instead, they will go to focus groups and find out what will sound good to people, what is a good line we can use and maybe they won't look behind it, maybe they will just look at the rhetoric and ignore the reality.